

The Honorable John H. Chun

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

KIM SNELL,

Plaintiff,

v.

THE STATE OF WASHINGTON;
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, JUDITH A.
FITZGERALD and UNA I. WILEY,

Defendants.

NO. C20-6028-JHC

DEFENDANTS' MOTION FOR
PARTIAL JUDGMENT AS A
MATTER OF LAW

Pursuant to Fed. R. Civ. P. 50(a), following the presentation of the Plaintiff's case, Defendants request a partial judgment as a matter of law, specifically dismissal of Plaintiff's claims under the Washington State Employee Whistleblower Protection Act, R.C.W. ch. 42.40, in their entirety, with prejudice.

The Washington State Employee Whistleblower Protection Act (WPA) defines a "whistleblower" as, in pertinent part, "An employee who...reports alleged improper governmental action to the auditor or other public official, as defined in subsection (7)." R.C.W. 42.40.020(10)(a)(i). The "other public official" language was added to the statute in 2008 in order to expand who could receive whistleblower complaints beyond solely the State Auditor's

Office. (Engrossed Substitute Senate Bill 6776, Chapter 266, Laws of 2008, § 2, effective Jun. 12, 2008). The WPA further defines “public official” as “the attorney general’s designee or designees; the director, or equivalent thereof in the agency where the employee works; an appropriate number of individuals designated to receive whistleblower reports by the head of each agency; or the executive ethics board.” R.C.W. 42.40.020(7).

At all relevant times, it is undisputed that Plaintiff was employed by the Washington Department of Social and Health Services. The director or equivalent of DSHS was the Secretary, Cheryl Strange, and, at the time of Plaintiff’s demotion, Acting Secretary Donald Clintsman. The Defendants have found neither case law nor legislative history that sheds light on the Legislature’s use of the word “agency” in connection with the units of State government.

The Washington State Auditor’s Office, however, on its website, indicates that it “maintains a spreadsheet with the current whistleblower designees at Washington state agencies.” (<https://sao.wa.gov/report-a-concern/how-to-report-a-concern/whistleblower-program/>) A copy of the current version of the spreadsheet is appended hereto reflecting that DSHS is an “agency,” as the State Auditor’s Office understands that word, and that the designees are the DSHS Secretary and the DSHS Discovery and Ethics Administrator.

It is the Plaintiff’s burden to establish, as an element of her WPA claim, that she is a whistleblower. That includes proving that she reported improper governmental action to the auditor or a public official. Ms. Snell did not make any reports to the State Auditor’s Office, and she has presented no evidence that DSHS has ever designated anyone other than the Secretary as a public official under the statute. Further, Plaintiff’s suggested reliance on a concession by the Defendants is wholly misplaced.

In her Complaint, Plaintiff alleged that she was a whistleblower, (Dkt. #1 at 14, ¶ 2.40), which the Defendants denied. (Dkt. #8 at 8, ¶2.40). Discovery in this case closed on January 30, 2023, (Dkt. #30), and Defendants moved for summary judgment on March 1, 2023. (Dkt. #38).

1 Plaintiff did not make a dispositive motion of her own by the March 1, 2023, deadline, nor has
 2 she ever sought an affirmative ruling from the Court that she satisfied the legal requirement that
 3 she make her alleged whistleblower complaint to a “public official.” Plaintiff cannot, at this late
 4 date, suggest that she detrimentally relied on a concession made solely in a reply on summary
 5 judgment to an issue that Plaintiff had not affirmatively sought a ruling. Further, Defendants did
 6 not agree as an “Admitted Fact” in the Agreed Pretrial Order that Assistant Secretary Fitzgerald
 7 was a “public official” for purposes of the WPA, and Defendants’ Trial Brief expressly stated
 8 that neither Tiffany Womack-Valdes, the HR consultant to whom Plaintiff reported her concerns,
 9 nor Assistant Secretary Judy Fitzgerald were designated by DSHS as “public officials” for
 10 purposes of the WPA. (Dkt. #91 at 22-23).

11 Plaintiff has not factually supported a suggestion that DSHS designated then Assistant
 12 Secretary Fitzgerald as a “public official” for purposes of the WPA. Further, Plaintiff has failed
 13 to legally establish that an assistant secretary, like Ms. Fitzgerald, is a “public official” as a
 14 matter of law.

15 Turning then to the facts of what Plaintiff did report to Secretary Strange, the only report
 16 actually made to Secretary Strange is the petition complaining about Ms. Shawn Hoage. (Trial
 17 Exhibit 61). The allegations of that petition do not allege improper governmental action under
 18 the WPA, and the petition, therefore, cannot constitute a whistleblower complaint triggering
 19 protections under the WPA.

20 The only other potential complaint to Secretary Strange appears in Trial Exhibit 86. This
 21 exhibit is an email from February 4, 2020, which was after Plaintiff had already been reverted
 22 from the Collection Manager position to Revenue Agent 4. As such, nothing that occurred prior
 23 to February 4, 2020, could support a claim of retaliation under the WPA. Moreover, Plaintiff did
 24 not address the email to Secretary Strange; rather, she merely included Secretary Strange as a
 25 cc: recipient. There has been no evidence presented to the jury by Plaintiff to suggest Secretary
 26

1 Strange ever read the courtesy copy of Plaintiff's email. Defendants submit that merely copying
 2 someone on an email does not constitute a "report[...to the...public official" within the
 3 definitions of the WPA.

4 When, as here, the Plaintiff fails to present facts and law to support a claim, the
 5 Defendants are entitled to judgment as a matter of law in accordance with Fed. R. Civ. P. 50(a).
 6 Defendants are timely bringing this motion as the Court has not yet submitted this case to the
 7 jury. Fed. R. Civ. P. 50(a)(2). Because Plaintiff has failed to establish that reports she made to
 8 anyone other than DSHS Secretary Strange were made to "other public officials" as defined by
 9 the WPA, because the petition Plaintiff signed did not make reports of improper governmental
 10 action within the WPA, and because Plaintiff did not make her February 4, 2020, report to
 11 Secretary Strange and is without evidence that her courtesy copy to Secretary Strange was ever
 12 actually seen by Secretary Strange, the Defendants request judgment as a matter of law and
 13 dismissal of Plaintiff's WPA claims, in their entirety, with prejudice.

14 DATED this 7th day of June, 2023.

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 26

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2023, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED this 7th day of June, 2023.

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662	Olympic College	Rick Sommer	Director of Labor & Compliance (WB Designee)	rsommer@olympic.edu	360-475-7129
670	Seattle Colleges	Jennifer Dixon	Vice Chancellor for Human Resources	jennifer.dixon@seattlecolleges.edu	206-934-4101
672	Shoreline Community College	Holly Woodmansee	Interim Vice President Business & Administration Serv.	www.shoreline.edu	206-546-4672
675	South Puget Sound Community College	Dr. Tim Stokes	President	tstokes@spcc.edu	
676	Community Colleges of Spokane	Christine Johnson	Chancellor	christine.johnson@ccs.spokane.edu	509-434-5006
676	Community Colleges of Spokane	Lisa Hjaltnin	Chief Financial and Risk Manager	lisa.hjaltnin@ccs.spokane.edu	509-434-5275
676	Community Colleges of Spokane	Maria Midkiff	Director of Internal Audit	maria.midkiff@ccs.spokane.edu	
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678	Tacoma Community College	Patty McCray-Roberts	Vice President Administrative Services	pmccray-roberts@tacocomc.edu	253-566-5050
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683	Walla Walla Community College	Brooke Marshall	Vice President of Student Services	brooke.marshall@wwcc.edu	509-527-4382
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686	Wenatchee Valley College	Reagan Bellamy	Executive Director of Human Resources	rbellamy@wvc.edu	509-682-6445
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691	Yakima Valley College	Dr. Teresa Rich	Vice President for Administrative Services	trichard@yvc.edu	509-574-4667
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694	Bellingham Technical College	Chad Stiteler	Vice President of Administrative Services	cstiteler@btc.edu	360-752-8313
694	Bellingham Technical College	Heide Ypma	Interim Vice President of Instruction	hyypma@btc.edu	360-752-8323
694	Bellingham Technical College	Michele Waltz	Vice President of Student Services	mwaltz@btc.edu	360-752-8440
694	Bellingham Technical College	Tami Willett	Interim Executive Director of Human Resources	twillett@btc.edu	360-752-8549
695	Bates Technical College	Kameil Border	Executive Director of HR		
695	Bates Technical College	Vlad Samoylenko	Associate Director of HR		
695	Bates Technical College	Nick Lutes	Vice President of Administrative Services		
696	Clover Park Technical College	Lisa Beach	Executive Director of Operations - Interim Vice President for Finance and Administration	lisa.beach@cptc.edu	253-589-5603